

HOUSE BILL REPORT

SSB 6785

As Reported by House Committee On:
Transportation

Title: An act relating to the administration of fuel taxes.

Brief Description: Modifying the administration of fuel taxes.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Jacobsen, Swecker, Haugen and Benson; by request of Department of Transportation and Department of Licensing).

Brief History:

Committee Activity:

Transportation: 2/20/06, 2/28/06 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Eliminates language indicating the state's fuel tax is imposed on the end user.
- Fuel distributors are allowed to purchase tax deferred fuel.
- Eliminates motor fuel handling loss deduction.
- Defines licensees as fuel suppliers, importers, exporters, blenders, distributors, or international fuel tax agreement license holders, for the incidence of taxation.
- Provides technical cleanups to existing fuel tax statutes.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 16 members: Representatives Murray, Chair; Wallace, Vice Chair; Appleton, Clibborn, Dickerson, Flannigan, Hudgins, Kilmer, Lovick, Morris, Sells, Simpson, B. Sullivan, Takko, Upthegrove and Wood.

Minority Report: Do not pass. Signed by 12 members: Representatives Woods, Ranking Minority Member; Buck, Campbell, Curtis, Ericksen, Hankins, Holmquist, Jarrett, Nixon, Rodne, Schindler and Shabro.

Staff: Jerry Long (786-7306).

Background:

Washington's fuel tax statutes declare that motor vehicle and special fuel taxes are imposed on the end user. Statute also directs fuel taxes be collected at the time the fuel is removed from

the terminal rack, with those in the chain of distribution above the retailer being allowed certain credits and required to keep records showing the tax has been passed down the distribution chain. However, retailers are not allowed those same credits, and are not required to pass on the tax to the consumer, or required to show receipts indicating the tax has been paid. Also, there is no enforcement at the user level for motor vehicle fuels to determine if the tax was paid by the end user.

On January 4, 2006, the U.S. District Court for the Western District of Washington entered an order in favor of two plaintiff tribes, the Squaxin and Swinomish, declaring that the legal incidence of Washington's motor vehicle fuel tax is on the retailer. Under federal law, absent explicit Congressional authorization, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. The order, therefore, states that Washington's motor vehicle fuel taxes may not be applied to motor vehicle fuels delivered to, received by, or sold by any retail fuel station that is owned by a tribe, tribal enterprise, or tribal member and located on tribal lands. Because the court found that the Squaxin and Swinomish meet the above criteria, the court entered an injunction against the collection of Washington's motor vehicle fuel taxes for fuels delivered to, received by, or sold by the plaintiffs' retail stations.

Summary of Amended Bill:

Current statutory language declaring that motor vehicle and special fuel taxes are imposed on the end user are eliminated from state motor vehicle and special fuel tax statutes. References to retailers, as well as refunds and credits available to, or tax liability of, licensed fuel distributors are also removed. Amendatory language is included to define licensees as fuel suppliers, importers, exporters, blenders, or international fuel tax agreement (IFTA) license holders, and explicitly states that the incidence of taxation be borne exclusively by these entities.

The Department of Licensing (DOL) is authorized to enter into fuel tax compact agreements with tribes that currently do not have such compacts within one year of the effective date of the bill, or within one year of the opening of the first tribally licensed retail station. A formula for disbursing fuel tax refunds to tribal entities is based on average, annual gallons consumed, number of enrolled tribal members on or near the reservation, and the current fuel tax rate. New sections are added to the motor fuel and special fuel tax chapters requiring tribal licensees and retailers pass the tax through to end users as part of the selling price.

Certain technical amendments are also addressed including: moving the racing fuel exemption from the special fuels to the motor fuels chapter, inserting IFTA provisions, and moving compliance language to more appropriate subsections of the two fuel tax chapters.

Amended Bill Compared to Substitute Bill:

The original bill does not allow fuel distributors to purchase tax deferred fuel and requires the distributors to apply to the DOL for a refund. The amended bill allows the distributors to purchase tax deferred fuel. The original bill eliminates the distributor license, the amendment

maintains the existing distributor license. The original bill eliminates the time provision for fuel distributors to pay fuel suppliers the fuel tax. The amendment requires the Office of Financial Management, Washington Oil Marketers Association, and Western States Petroleum Association to prepare and submit a report to the Legislative Transportation Committees documenting methodology to be used in repealing the payment provision between distributors and suppliers by December 1, 2006, to take effect on June 1, 2007. The compacts in the original bill with tribes that do not currently have compacts authorizes the DOL to enter into compacts with the tribes within one year of the bill enactment or within a year after a tribe opens its first retail outlet. The amendment says the Governor may enter into a compact with a tribe. Tribes will expend fuel tax proceeds on essential governmental services, including but not limited to: planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities, transportation planning; policing services; and other highway related purposes. Existing tribal compacts will stay in place but any tribe may substitute one of the new compacts for an existing compact. The DOL will submit an annual report to the Legislature on existing compacts and ongoing agreements. Both bills add the required language to bring the State of Washington into the federal International Fuel Tax Agreement, cleans up old and obsolete RCWs and removes all references to retailers. The bills move the incident of the fuel tax from the retail level to the supplier level.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The decision to explicitly place the incidence of taxation at the supplier level was based on the belief that it is the most legally defensible option, harms the least number of interests, and offers the greatest level of protection against future litigation with regard to state fuel tax revenues. Two issues also addressed by the bill include the legal issue of tax incidence, where the suppliers are neutral on the issue and the policy issue of state regulation of payment due dates within the industry, which is eliminated by this bill. Out of the 400 to 500 distributors in the state, only 119 of the suppliers are licensed and take advantage of the payment float and distributor credits available. One of the goals in the bill was to not impact the tax at the rack process enacted by the Legislature in 1999 and the existing tribal compacts.

Testimony Against: Distributors agree the issue needs to be addressed but believes a bill that does not eliminate the credits for distributors would also solve the problem. The state could keep the tax at the rack and impose the tax on distributors as a first possession tax upon removal from the rack. The Potawatami case in Kansas demonstrates that the float can be kept intact without jeopardizing the state's ability to tax the sale of fuel. Distributors' cash flow is negatively impacted and that inability to offer credit downstream to farmers, contractors, and retailers will hurt small businesses. The elimination of the float doesn't benefit the state

but rather benefits suppliers whose payment due date to the state remains unchanged. The distributors in many cases will be required to borrow money and pay interest on the loans to replace the float the distributors will lose. The Squaxin Tribe does not agree with the bill, and request that the fuel tax collected on tribal reservations be refunded back to the tribes at 100 percent since the tribes must take care of their own roads. The tribes were not invited into the discussion on the development of the bill. The tribes are supportive of the compact process and would like to see a fuel compact like the cigarette compacts that are in place. It is important that the tribes have good roads and would like to have additional fuel tax funds to provide the necessary maintenance and preservation.

Persons Testifying: (In support) Sharon Whitehead and Julie Knittle, Department of Licensing; Mary Tennon, Attorney General's Office; and Greg Hamon, Western States Petroleum Association.

(Opposed) Kelly Cronan, Squaxin Island Tribe; Mike Moran, Samish and Quileute Tribes; Randy Scott, Quinault Nation and Colville Tribe; Charlie Brown, Washington Oil Marketers Association; Ed Lowery; Ralph Bauman, Pettit Oil Company; and Janet Tritts, Sun Pacific Energy.

Persons Signed In To Testify But Not Testifying: None.